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Supreme Court of the United States

OCTOBER TERM, 1957

Docket No. 48

ROSE STAUB,

Appellant,

—against—

CITY OF BAXLEY,

Appellee.

BRIEF FOR *AMICUS CURIAE*

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ROSE STAUB,

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Appellee.

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE, AS *AMICUS CURIAE*

Interest of the Workers Defense League

This brief is filed on behalf of the WORKERS DEFENSE LEAGUE as *amicus curiae* with the consent as submitted to this Honorable Court, of the attorneys for the respective parties. The WORKERS DEFENSE LEAGUE is a nation-wide, non-profit organization whose members are lawyers and laymen vitally interested in the fundamental personal rights guaranteed to individuals by the Constitution of the United States and of the various states.

A free and democratic trade union movement is of the greatest necessity in these difficult times. Perversion of free trade unionism occurs behind the

"iron curtain". It is to the interest of all Americans and to the Free World that we show that we do not encourage the prohibition or improper limiting of the legitimate right of Americans to organize into free associations for their mutual benefit.

Having these beliefs, we urge, for the reasons stated below, that the ordinance in question is a less than thinly disguised attempt at prohibiting trade-union activity.

As will be seen below, no mention has been made of issues which may well be raised by the parties; namely, whether Congress has preempted the area encompassed by this ordinance; and whether on these facts the ordinance was applied unconstitutionally. By omitting them, we do not demean their importance, but rather limit our concern to matters we believe to be directly within the purview of the WORKERS DEFENSE LEAGUE.

We respectfully request and pray that this brief be accepted by this Honorable Court.

Statement

This brief is submitted on behalf of the WORKERS DEFENSE LEAGUE as *Amicus Curiae*. Consents have been obtained from both parties and are filed herewith. In the aid of brevity, no statement of the case or of the facts is made. That we leave to the respective parties, believing that the important issues concern law.

Outline of Argument

The Ordinance of the City of Baxley is void on its face because:

(a) The discretionary power to grant the license is so broad as to make the ordinance unconstitutional as an improper restraint on speech and assembly.

(b) The tax as set forth in this ordinance represents an unconstitutional invasion of speech and association protected under the First Amendment to the Constitution of the United States and protected against invasion by the respective states in the Fourteenth Amendment.

(c) Under the guise of regulation the ordinance prohibits the right of free association and speech and is thus unconstitutional.

Ordinance of the City of Baxley, Georgia

"AN ORDINANCE TO REGULATE THE SOLICITATION OF MEMBERSHIP IN ORGANIZATIONS AMONG THE CITIZENS OF THE CITY OF BAXLEY; TO PROVIDE FOR PERMITS FOR PERSONS OR AGENTS SOLICITING SUCH MEMBERS; TO PROVIDE FOR LICENSE FEES AND FOR VIOLATION OF THIS ORDINANCE.

BE IT AND IT IS HEREBY ORDAINED BY MAYOR AND COUNCIL OF CITY OF BAXLEY AS FOLLOWS:

Section I. Before any person or persons, firms or organizations shall solicit membership for any organization, union or society of any sort which requires from its members the payments of membership fees, dues or is entitled to make assessment against its members, such person or persons shall make application in writing to Mayor and Council of the City of

Baxley for the issuance of a permit to solicit members in such organization from among the citizens of Baxley.

Section II. Such application shall give the name and nature of the organization for which applicant desires to solicit members, whether such organization is incorporated or unincorporated, the location of its principal office and place of business and the names of its officers, along with date of its organization, and its assets and liabilities. Such application shall further contain the age and residence of applicant including places of residence of applicant for past ten years; and as well as business or profession in which such applicant has been engaged during said time, and shall furnish at least three persons as references to applicant's character. Said application shall also furnish the information as to whether applicant is a salaried employee of the organization for which he is soliciting members, and what compensation, if any, he receives for obtaining members.

Section III. This application shall be submitted to a regular meeting of Mayor and Council of City of Baxley, and in event it is desired by Mayor and Council to investigate further the information given in the application, or in the event the applicant desires a formal hearing on such application, such hearing shall be set for a time not later than the next regular meeting of the Mayor and Council of City of Baxley. At such hearing the applicant may submit for consideration any evidence that he may desire bearing on the application, and any interested person shall have the right of appearing and giving evidence to the contrary.

Section IV. In passing upon such application the Mayor and Council shall consider the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of citizens of the City of Baxley.

Section V. The granting or refusing to grant of such application for a permit shall be determined by vote of Mayor and Council, after consideration and hearing if same is requested by applicant or Mayor and Council, in the same manner as other matters are so granted or denied by the vote of the Mayor and Council.

Section VI. In the event that person making application is salaried employee or officer of the organization for which he desires to seek members among the citizens of Baxley, or persons employed in the City of Baxley, or received a fee of any sort from the obtaining of such members, he shall be issued a permit and license for soliciting such members upon the payment of $2000.00 per year. Also $500.00 for each member obtained.

Section VII. Any person, persons, firm, or corporation soliciting members for any organization from among the citizens or persons employed in the City of Baxley without first obtaining a permit and license therefor shall be punished as provided by Section 85 of Criminal Code of City of Baxley.

Section VIII. All Ordinances of City of Baxley in conflict with ordinance are hereby repealed.

Section IX. Should any section or portion of this Ordinance be held void, it shall not affect the remaining sections and portions of same.

Duly adopted by Mayor and Council of City of Baxley in regular meeting duly assembled on the 17th day of Sept., 1949.

/s/ C. A. WHITAKER, Mayor, /s/ J. H. KEELS, Clerk."

Recorded in City of Baxley Minute Book 3, page 396.

I. The ordinance of the City of Baxley, Georgia, is void on its face because:

A. The Discretionary Power to Grant a License Is So Broad as to Make the Ordinance Unconstitutional as an Improper Restraint on Speech and Assembly.

The ordinance in question does not purport to regulate the acquisition of funds, its distribution, management, or similar financial matters. Section I of the ordinance makes it mandatory for a person desiring to "solicit" members for any organization, union, or society, to apply in writing to the Mayor and Council for the issuance of a permit. Under Section V, the granting or denial of such a permit is discretionary with the Mayor and Council of the City of Baxley. Section VII proposes to punish a person for "soliciting" members for an organization without a permit. A literal construction of this ordinance makes punishable the act of writing about or explaining to another the advantages of joining or belonging to a lodge, labor union or religious society, without first obtaining permission from the Mayor and Council.

Such broad discretionary power as set forth in Sections III-V has often been stricken down by this Court in dealing with similar ordinances. Cf. *Lovell* v. *Griffin,* 303 U. S. 444, 450-452; *Hague* v. *C. I. O.,* 307 U. S. 496; *Cantwell* v. *Connecticut,* 310 U. S. 296, 304; see also *Schneider* v. *State,* 308 U. S. 147; supra, where an ordinance which made it incumbent upon a City Manager to issue a license was held invalid on its face because it gave the issuing authority too broad a discretionary power to revoke the license.

The grant of too broad a discretionary power has wisely been curtailed by this court. Unless the power to grant a license is merely ministerial, the power may be subjected to such abuse as to be destructive of free association and speech, under constitutional protection.

It is clear that no authority of government should be used in favor of one or the other party in industrial matters. Pursuant to this ordinance, however, the official with whom the discretionary power resides may refuse to license one party and grant such a license to another in a labor-industrial dispute.

Furthermore, a political rather than a ministerial official is the repository of the power. Thus a Democratic Party organizer in Baxley, Georgia, might be refused a license should the licensing official be a Republican. An ordinance which may be subject to such abuse, we urge, must be stricken as violative of the constitution.

We do not wish, at this time, to express any general opinion regarding the validity of legislation merely

providing for disclosure or identification of persons acting as a labor organizer. A consideration of this question is not necessary to a decision of this case. In any event, it could hardly be contended that the Baxley ordinance is ministerial only, or that its primary purpose is to insure the identification of persons acting as labor organizers.

B. The Fees as Set Forth in This Ordinance Represent an Unconstitutional Invasion of Speech and Association Protected Under the First Amendment to the United States Constitution and Protected Against Invasion by the Respective States in the Fourteenth Amendment.

In applying for a permit, Section VII of the ordinance requires a *salaried* employee or officer of an organization seeking members from among the citizens of Baxley or *persons employed in the City of Baxley* to pay the flat sum of *$2,000.00* per year, and *$500.00* for each member obtained.

Compliance with this provision is a practical impossibility. It was observed by the Clerk of the City Council that during her tenure of office, she had never seen anyone apply for a license to solicit members for an organization (R. 23). The fee of $500.00 per member for soliciting charged by Baxley could not be recovered for almost 15 years on the basis of dues of 63¢ per week as referred to herein (R. 25). It is not necessary to consider the right of a locality to make reasonable regulations concerning solicitation of union members since a license fee of $2000. and $500. per member constitutes prohibition, not regulation. Not one person had applied for a license (R.

23). Ironically, the ordinance allegedly should "provide for permits" for soliciting members. On their face, however, the fees charged bear not a scintilla of relationship to granting licenses, but are prohibitive in fact. We urge that thinly veiled attempts to prohibit the organization of persons voluntarily into free trade unions, should be stricken down by this Court. What constitutes appropriate regulation as distinct from prohibition may be difficult to define under other circumstances. In the case at bar, however prohibition is so clearly perceived, a careful examination of that question is not, we respectfully urge, necessary.

As such, the provision falls under the aegis of those cases which hold that "A state cannot impose a charge for the enjoyment of a right granted by the Constitution", *Murdock* v. *Pennsylvania*, 319 U. S. 105, 113; cf. *Jones* v. *Opelika*, 316 U. S. 584, 609.

C. Under the Guise of Regulation the Ordinance Prohibits the Right of Free Association and Speech and Is Thus Unconstitutional.

This ordinance is so broadly drawn that the free exchange of ideas, the urging of a certain course of conduct, the free association of people are subject to the penalties of the law. The right to speak one's mind fully is hampered. Apparently, should a union have a paid organizer, then even unpaid interested persons are prevented from urging members of the community to join the union, despite the fact they may all have a direct community of interest.

The Court has on numerous occasions, reasserted the proposition that in the absence of a clear and

present danger, freedom of speech, press and assembly are guaranteed under the First Amendment to the Constitution of the United States and protected against any unreasonable invasion by a municipality or any state in the exercise of its police power by the Fourteenth Amendment to the Constitution of the United States. In *Hague* v. *C. I. O.*, supra, the ordinance was held void on its face because it provided for prior censorship of the right of speech and assembly in appropriate public places.

Similarly, neither a state nor a municipality may bar completely, the distribution of literature containing religious or political ideas on its streets, sidewalks or public places, or make the right to distribute dependent on a flat license permit tax or permit to be issued by an official who could bar it at will, because "the struggle for freedom of the press was primarily directed against the power of the licensor" for the "right to publish without a license what formerly could only be published with one." *Lovell* v. *Griffin*, 303 U. S. 451, 452. The right to disseminate ideas has been extended to the public streets, see *Martin* v. *Struthers*, 319 U. S. 141; and to company or privately owned towns, *Marsh* v. *Alabama*, 326 U. S. 501. Nor can it be said that the protected liberties are limited as to subject matter, *Herndon* v. *Lowry*, 301 U. S. 242, or to a particular class of persons, *Schneider* v. *State*, supra.

Close judicial scrutiny of possible limitations on the constitutional rights of citizens has been made by this Court expressly including the protection of the constitution to the free dissemination of *ideas* or opinions

concerning labor-management relations by labor representatives. This court stated in *Thomas* v. *Collins*, 323 U. S. 516, 531-532:

> "This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Meyer* v. *Nebraska*, 262 U. S. 390; *Prince* v. *Massachusetts*, 321 U. S. 158. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religous or political ones. And the right of free speech and free press are not confined to any field of human interest . . . This Court has recognized that in the circumstances of our times, the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution . . . Free discussion concerning the conditions in industry and the causes of labor disputes appear to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern society." *Thornhill* v. *Alabama*, 310 U. S. 88, 102-103; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478. "The right to inform people concerning the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496."

Free discussion of labor problems and industrial relations is, and must be, a protected activity under the Constitution of the United States.

II. For the reasons stated above we urge that this Honorable Court reverse the judgment of the Court below.

Respectfully submitted,

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